11-30-04 ITW AF

769-303 (ITW 13231)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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| Applicant: | Eric Plourde et al. | Art Unit: | 3677 |
| Serial No.: | **09/998,502** | Examiner: | Andre L. Jackson |
| Filed: | November 30, 2001 | Customer No. | 29540 |

For: **VARIABLE ALIGNMENT ZIPPER FOR RECLOSABLE BAGS**

TRANSMITTAL OF APPEAL BRIEF

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S I R:

Enclosed is an original brief to the Board of Patent Appeals and Interferences and three photocopies thereof. This Appeal Brief is being filed pursuant to the Notice of Appeal dated September 24, 2004, with an apparent Office filing date of September 29, 2004. A check for the Rule 17 fee for filing an appeal brief is enclosed herewith. Any other fees may be charged to Deposit Account 50-1145, Order No. 769-303.

Respectfully submitted,

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Board of Patent Appeals and Interferences

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Application Serial No. 09/998,502

Filed: November 30, 2001

Art Unit: 3677

Examiner: Andre L. Jackson

# VARIABLE ALIGNMENT ZIPPER FOR RECLOSABLE BAGS

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Ex parte: Eric P. Plourde
Kevin P. Olechowski

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BRIEF FOR THE APPELLANTS

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Pitney Hardin LLP
Attorneys for the Appellants

I. REAL PARTY IN INTEREST

The real party in interest is assignee Illinois Tool Works Inc.

II. RELATED APPEALS AND INTERFERENCES

None

III. STATUS OF CLAIMS

Claims 1-4 are rejected.

IV. STATUS OF AMENDMENTS

The after-final Response mailed August 17, 2004 (with an apparent Office filing date of August 19, 2004) did not amend the claims. This Response was followed by an Advisory Action dated September 2, 2004. The Notice of Appeal was filed September 24, 2004 with an apparent Office filing date of September 29, 2004.

V. SUMMARY OF INVENTION

The present invention relates to a variable alignment zipper having rib and groove type interlocking elements. The male interlocking profile (Fig. 2, element 16) of the zipper has a plurality of male ribs, each with a double-barbed end section. The male interlocking profile is interlockable with a female interlocking profile (Fig. 2, element 20). The female interlocking profile has a plurality of male ribs (Fig. 2, elements 44, 48, 52) which form grooves (Fig. 2, elements 64, 68) for engaging the male interlocking profile. The bordering ribs of the female

interlocking profile are each shaped with a single-barbed end section (Figure 2, element 56) facing inward toward a middle male rib formed with a double-barbed end section. By varying the engagement of the male and female interlocking profiles, the zipper can align in any one of four positions for closure (four positions shown in Figures 2-5). These various alignments would each provide a balanced tactile feel to the user during an opening or closing of the zipper.

## VI. ISSUES

Are Claims 1-4 patentable under 35 U.S.C. §103(a) in view of the Tomic reference (U.S. Patent No. 6,217,215)?

## VII. GROUPING OF CLAIMS

The claims stand together for each ground of rejection.

## VIII. ARGUMENTS

Are Claims 1-4 patentable under 35 U.S.C. §103(a) in view of the Tomic reference (U.S. Patent No. 6,217,215)?

The Office Action rejects Claims 1-4 under 35 U.S.C. §103(a) as being obvious over the Tomic reference (U.S. Patent No. 6,217, 215).

Presently pending Claim 1 recites "whereby ribs adjacent to said one and only one rib having a central tip and a pair of barbs flex outwardly in said interlocking relationship, and are free of flexing inwardly into any of said first plurality of continuous grooves". It is respectfully

submitted that this is supported by Figures 2-5 wherein male ribs 44 and 52 are adjacent to rib 48 and male rib 44 can move upwardly and male rib 52 can move downwardly (both "upwardly" and "downwardly" refer to the orientation shown in the figures) thereby flexing outwardly without flexing inwardly into grooves 64 or 68.

In contrast, Appellants refer to Figure 7 of the Tomic reference wherein if any two ribs are chosen which are immediately adjacent to either rib 578 or 579, these adjacent ribs cannot flex without flexing inwardly into at least one channel between the ribs. More specifically, ribs 578 and 580 are adjacent to rib 579, any flexing movement of rib 578 would impinge on at least one adjacent channel. Likewise, ribs 577 and 579 are adjacent to rib 578, any flexing movement of rib 579 would impinge on at least one adjacent channel.

In this regard, the Appellants concur with the following language of the Office Action:

> Tomic fails to disclose that the ribs are free of flexing inwardly into any of the plurality of grooves or that the second inter-lockable profile has one and only one of the ribs having a central tip and a pair of barbs extending laterally on each side of the tip. Instead, Tomic includes two such ribs (578, 579)

However, the Appellants respectfully traverse the language which follows the above-quoted language of the Office Action:

> However, in column 8, lines 16-19, Tomic disclose[s] that the first and second inter-lockable profiles can be constructed to have any number of ribs. Therefore, it would have been obvious to one having ordinary skill in the art at the time of Applicant's invention to modify the closure mechanism of Tomic to reduce the number

of ribs having a central tip and a pair of barbs extending laterally thereof, from two to one for the purpose of reducing material and overall cost of manufacture while maintaining a balanced tactile feel.

Apparently, the Office Action cites the following language from column 8, lines 18-19 to support the rejection, to wit, "Alternately, the first and second closure profiles 571, 572 may include any number of profiled elements" (emphasis added).

Appellants respectfully submit that this statement is not adequate for Tomic to serve as prior art against "any number of profiled elements" regardless of the unexpected results that may occur with a reduced number of profiled elements. Analogously, col. 5, line 14 and 15 of the Tomic reference states "Of course, the feedback ribs 161 can be other desired sizes or shapes". Yet, such a statement would not serve as prior art against a new shape of a feedback rib which achieved unexpected results. Even further analogously, a hypothetical statement that any shape or material could be used for a device would not serve as prior art against any new shape or material used for a device which achieved unexpected results.

In short, the cited statement, with its use of the word "any" is essentially an unbounded range. Further, there is nothing in this statement that makes any suggestion of the number of profiled elements to use. There is certainly no discussion that a reduction in the number of elements increases the balanced tactile feel of the device.

As stated in MPEP 2144.08 II A 4 (a) (page 2100-148 of Eighth Edition, Incorporating Rev. 2, May 2004). "Some motivation to select the claimed species or subgenus must be taught by the prior art." There is no such statement in the Tomic reference.

As stated above, the prior art essentially discloses an unbounded range. As stated in MPEP 2144.05 (page 2100-142 of the above-referenced edition), "However, if the reference's disclosed range is so broad as to encompass a very large number of possible distinct compositions, this might present a situation analogous to the obviousness of a species when the prior art broadly discloses a genus" (emphasis added).

It is therefore respectfully submitted that the operative language cited by the Office Action has no substantive prior art value and that the presently pending claims are patentable over the prior art.

The Board is respectfully requested to find all of the presently pending claims to be allowable.

Respectfully submitted,

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## IX. APPENDIX OF PRESENTLY PENDING CLAIMS

1. A variable alignment zipper comprising:

a first interlockable profile having a longitudinally extending web portion and having a longitudinally extending locking portion, said locking portion of the first profile having a plurality of continuous shaped ribs extending therealong, said ribs having a central tip and barbs extending laterally at each side of the tip with the barbs providing a first interlocking contact area;

a second interlockable profile having a longitudinally extending web portion and having a longitudinally extending locking portion, said locking portion of the second profile having a plurality of continuous shaped ribs extending therealong with one and only one of said ribs having a central tip and a pair of barbs extending laterally at each side of the tip and said rib with a central tip of said second profile bordered by two of said ribs shaped with a distal end with one and only one barb extending laterally from the distal end with the barbs providing a second interlocking contact area;

a first plurality of continuous grooves therebetween the ribs of said second profile, said first plurality of continuous grooves receptive in at least one interlocking relationship to the locking portion of said first profile, whereby ribs adjacent to said one and only one rib having a central tip and a pair of barbs flex outwardly in said interlocking relationship, and are free of flexing inwardly into any of said first plurality of continuous grooves.

2. The variable alignment zipper in accordance with claim 1, further including a second plurality of continuous grooves therebetween the ribs of the first profile, said second plurality of continuous grooves receptive in at least one interlocking relationship to the locking portion of said second profile.

3. The variable alignment zipper in accordance with claim 1, wherein said locking portion of the first interlockable profile includes three ribs.

4. The variable alignment zipper in accordance with claim 1, wherein said one and only one barb of at least two of said ribs shaped with a distal end extends laterally to said at least one of said ribs having a central tip.